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Attorneys for the Foreign Representative

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Oceanair Linhas Aéreas S/A.

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 18-_____

DECLARATION OF FOREIGN REPRESENTATIVE

I, Frederico Miguel Preza Pedreira Elias Da Costa, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. In my capacity as the duly appointed representative (the “Foreign Representative”) of Oceanair Linhas Aéreas S/A (“Oceanair”), I hereby submit this declaration (“Declaration”) in support of the *Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Related Relief Pursuant to Bankruptcy Code Sections 1515, 1517, 1520 and 1521* (“Verified Petition”) and *Motion of Foreign Representative for Provisional Relief Pursuant to Bankruptcy Code Sections 1519(a) and 362(a)* (“Motion for Provisional Relief”) filed concurrently herewith.

2. The Verified Petition and Motion for Provisional Relief filed concurrently herewith seek recognition by this Court of the Brazilian Insolvency Proceeding as a foreign main proceeding, and provisional relief pending recognition, specifically, application of the automatic stay.

3. I am a citizen and resident of Brazil and the current Chief Executive Officer (“CEO”) of Oceanair, a position I have held since 2016. I have worked for Oceanair since 2009.

Appointment of the Foreign Representative

4. On November 26, 2018, Oceanair authorized me to represent it in insolvency proceedings in Brazil and in Chapter 15 proceedings in the United States. Attached as Exhibit 1 to this Declaration are the Board Minutes reflecting my authorization to represent Oceanair in Chapter 15 proceedings in the United States, and their English translation.

5. The matters set forth in this Declaration that are statements of fact within my personal knowledge are true. Matters stated in this Declaration that are statements of fact not within my personal knowledge are derived from documents, publicly available information and/or other sources given to me and are true to the best of my knowledge, information and belief.

Overview of Oceanair and its Status

6. Oceanair is a successful Brazilian commercial airline operating under the trade name “Avianca Brazil.”

7. Oceanair, which was incorporated in 1998, is a wholly owned Brazilian subsidiary of AVB Holdings, S.A. (“AVB”), a Brazilian holding company.

8. Oceanair’s ultimate parents are Synergy Trust, a Guernsey holding company, and Jose Efromovich, a prominent Brazilian businessman. Exhibit 2 is an organizational chart depicting Oceanair’s ownership structure.

9. Oceanair does not have any bond debt or fuel hedge arrangements. Its primary debt is in the form of its obligations under its aircraft and engine leases.

10. Oceanair is headquartered and has its registered office at Avenida Washington Luis, 7.059, Campo Belo, São Paulo - SP, Brazil, CEP 04627-006.

11. Oceanair's management is based out of its Brazilian headquarters.

12. Oceanair is part of the Synergy Group, which also controls indirectly Avianca Holdings S.A. ("Avianca Holdings").

13. Avianca Holdings has several subsidiary airlines, including TACA Peru, Avianca Colombia (the biggest airline of the Group), LACSA (Líneas Aereas Costarricenses) and Avianca Ecuador (Aerogal).

14. Two of Oceanair's international routes serve airports in Miami (Miami International Airport, "MIA") and New York (John F. Kennedy International Airport, "JFK"). Both routes operate to and from Sao Paulo.

15. From its inception in 1998 through 2014, Oceanair grew and expanded. In 2010 it assumed the trade name and logo of "Avianca Brazil," and it is currently the fourth largest Brazilian airline in terms of market share.

16. In 2015, Oceanair became an affiliate of the Star Alliance network, which allows it to partner with other member and affiliate airlines to provide customers more flexibility in their travel by offering services to more locations.

17. Today, Oceanair operates 249 daily flights, transporting 29,300 passengers daily. Oceanair's business also includes transportation of cargo domestically and internationally.

The Brazilian Insolvency Proceeding

18. Despite its early success, Oceanair has been negatively impacted by the ongoing Brazilian economic crisis, which began in 2014.

19. Additionally, dramatic increases in fuel costs have negatively impacted Oceanair's profits in recent years.

20. The increase in fuel costs was further exacerbated by the increasingly unfavorable exchange rate between Brazil and the United States.

21. Oceanair responded to these economic pressures by taking steps to reduce operational costs. These measures were largely successful, such that in 2017 domestic operations generated a profit.

22. International operations, however, still generated an economic loss due in large part to the deepening economic crisis, the high cost of fuel, and the falling value of the Brazilian currency against the United States Dollar.

23. Despite its efforts to renegotiate its debts with its principal creditors, Oceanair has been unable to reach an extra-judicial resolution.

24. Recently, three of Oceanair's lessors filed foreclosure actions in Brazil seeking to repossess fourteen of Oceanair's aircraft.

25. Consequently, on December 10, 2018, Oceanair and its parent company, AVB Holdings, S.A. ("AVB," together with Oceanair, the "Brazilian Debtors") filed a petition for judicial restructuring, known as a *recuperação judicial* before the First Bankruptcy Court of the Central Courthouse of the Judicial District of Sao Paulo State Capital [*Direito Da 1ª Vara De Falências E Recuperações Judiciais Do Foro Central Da Comarca Da Capital – Sao Paolo*] (the "Brazilian Bankruptcy Court") seeking a voluntary judicial restructuring and emergency relief to stay the foreclosure actions (the "Brazilian Insolvency Proceeding"). The proceeding was assigned the unique number 1125658-81.2018.8.26.0100. Exhibit 3 is Oceanair's original petition and its English Translation.

26. On December 11, 2018, the Brazilian Bankruptcy Court granted the Brazilian Debtors' request for emergency relief and ordered the Brazilian Debtors to amend their petition to

provide additional information to the Brazilian Bankruptcy Court. Exhibit 4 to this Declaration is the December 11, 2018 Order and its English Translation.

27. On December 12, 2018, the Brazilian Debtors filed an amended petition (the “Amended Petition”). Exhibit 5 to this Declaration is the Amended Petition and its English Translation.¹

28. On December 13, 2018, the Brazilian Bankruptcy Court extended the emergency relief, granted the request to enter into judicial restructuring and set a hearing for January 14, 2019. Exhibit 6 to this Declaration is the December 13, 2018 Order and its English Translation. Oceanair is not a party to any pending bankruptcy proceedings other than the Brazilian Insolvency Proceeding.

Overview of Oceanair’s Business Operations

29. Oceanair’s primary capital assets are its aircraft and its engines, both of which are the objects of operational leases, as is customary in the airline industry.

30. Oceanair’s fleet consists of 47 aircraft: 4 Airbus A330; 10 Airbus A320Neo; 26 Airbus A320; 4 Airbus A319; and 3 Airbus A318.

31. Oceanair leases each of its aircraft and its engines through operational leases.

32. Oceanair also enters into various service contracts for ground operations and cargo handling in connection with its flight operations.

Employees

33. Oceanair employs more than 5,500 people.

34. To support its operations in the United States, Oceanair primarily outsources its personnel requirements to its partner airlines or service providers.

35. In 2017, Oceanair’s annual revenue was \$12,465,716² and net income was approximately \$763,112.64.

¹ The Amended Petition included numerous evidentiary exhibits totaling in excess of 800 pages. This Declaration does not attach the exhibits to the Amended Petition.

36. In 2018, Oceanair projects annual revenue of \$44,807,874.82 and net revenue of (\$1,640,459.70).

37. The majority of Oceanair's revenue is from domestic operations.

Oceanair's U.S. Aircraft Leases

38. Oceanair uses five airplanes to service its New York and Miami routes. All except one (MSN 1506, as defined below) are passenger aircraft. MSN 1506 is a cargo aircraft. Each of these airplanes and its associated engines are the subject of operational leases or subleases, as described in the following paragraphs.

39. On June 12, 2017, Oceanair entered into a ten-year lease agreement with the Bank of Utah in its capacity as trustee for the N508AV trust for one Airbus A3320-243F (manufacturer's serial number ("MSN") 1508) and two Rolls Royce Trent 772B-60 aircraft engines (Serial Nos. 42372 and 42373) for approximately \$431,846 per month (the "MSN 1508 Lease"). The lease is governed by New York law and subject to the exclusive jurisdiction of the United States District Court for the Southern District of New York and New York State, county and city courts. Exhibit 7 is the MSN 1508 Lease.

40. On December 4, 2015, Oceanair entered into a ten-year lease agreement with OS Two LLC ("OS Two") for one Airbus A3320-243F (MSN 1608) and two Rolls Royce Trent 772B-60 engines (Serial Nos. 42590 and 42591) for approximately \$890,000 per month plus supplemental rent of \$6,600,000 due in the first 60 months of the lease (the "MSN 1608 Lease"). The lease was later amended to modify the supplemental rent. The lease is governed by New York law and subject to the non-exclusive jurisdiction of New York state and county courts and the United States District Court for the Southern District of New York. Exhibit 8 is the MSN 1608 Lease.

² References herein to "\$" are to U.S. dollars.

41. On December 4, 2015, Oceanair entered into a ten-year lease agreement with OS Two for one Airbus A3320-243F (MSN 1657) and two Rolls Royce Trent 772B-60 engines (Serial Nos. 42617 and 42618) for approximately \$890,000 per month plus supplemental rent of \$6,600,000 due in the first 60 months of the lease (the “MSN 1657 Lease”). The lease was later amended to modify the supplemental rent. The lease is governed by New York law and subject to the non-exclusive jurisdiction of New York state and county courts and the United States District Court for the Southern District of New York. Exhibit 9 is the MSN 1657 Lease.

42. On June 5, 2018, Oceanair entered into a four-year Aircraft Sublease Agreement with Aerovia del Continente Americano, S.A. Avianca for the sublease of one Airbus A3320-243 (MSN 1208) and two Rolls Royce Trent 772B-60 aircraft engines (Serial Nos. 41880 and 41900), which Avianca had previously leased from Wells Fargo Trust Company, N.A. (“Wells Fargo Trust Company”) (the “MSN 1208 Sublease”). Monthly rent due under the sublease is \$750,000. The lease is governed by New York law and subject to the jurisdiction of New York County courts and United States Federal Courts for the Southern District of New York. Exhibit 10 is the MSN 1208 Sublease.

43. On April 4, 2014, Oceanair entered into an Aircraft Sublease Agreement with Aerovia del Continente Americano, S.A. Avianca for the sublease of one Airbus A3320-243F (MSN 1506) and two Rolls Royce Trent 772B-60 aircraft engines (Serial Nos. 42370 and 42371), which Avianca had previously leased from Aircol 34 (the “MSN 1506 Sublease”). The term of the sublease is from April 2014 to April 2026. The sublease monthly rental amount was originally \$886,047. In 2017, the parties amended the sublease to reduce the monthly rent to \$740,000, effective January 1, 2017. The sublease is governed by English law and subject to the non-exclusive jurisdiction of the English courts. Exhibit 11 is the MSN 1506 Sublease.

44. Oceanair also leases two CFM56-5B4/3 aircraft engines from Wells Fargo Bank Northwest, N.A. These are identified by their Engine Serial Numbers (“ESN”) and are referred to as ESN 573750 and ESN 643846.

45. ESN 573750 is leased under a 96-month lease agreement entered into on October 18, 2016 for a monthly rate of \$72,500. Exhibit 12 is the ESN 573750 lease.

46. ESN 643846 is leased under a 120-month lease agreement entered into on August 25, 2016 for a monthly rate of \$70,000. Exhibit 13 is the ESN 643846 lease.

Oceanair’s U.S. Service Contracts

47. While most of Oceanair’s property is located in Brazil, in connection with its United States routes, Oceanair holds and must maintain licenses to use the United States airport facilities, including a right to use shared aircraft gates at JFK in New York and a right to use airport facilities, including gates, at MIA in Miami, Florida. Attached as Exhibits 14 and 15 are the JFK license agreement and the Miami Airport Use Agreement.

48. Oceanair purchases fuel in the United States under fuel contracts with fuel service providers located in the United States and also contracts with various entities that provide ground services at the New York and Miami airports, including baggage handling, cleaning, and passenger transport services.

49. Oceanair’s United States-based contracts involving its JFK route include:

- a. A two-year license agreement for use of Terminal 4 at JFK with John F. Kennedy International Air Terminal, LLC (“JFK Terminal”). The contract is governed by New York law. Exhibit 14.
- b. A one-year contract with World Fuel Services, Inc (“World Fuel Services”) for the purchase of jet fuel and related services at JFK. The contract is governed by New York law and subject to the jurisdiction of New York state and federal courts. Though this contract term has expired, World Fuel Services Continues to provide fuel services to Oceanair under the terms of the agreement. Exhibit 16.

- c. A three-year contract for ground handling services and passenger services at JFK with Swissport USA, Inc. ("Swissport"). The contract is governed by New York law. Exhibit 17.
- d. A two-year contract for aircraft cleaning services at JFK with Airway Cleaners, LLC ("Airway Cleaners"). The contract is governed by New York law. Exhibit 18.
- e. A three-year contract for crew lodging at JFK with Hotel Westbury Operating Corp. (Holiday Inn Westbury) ("Westbury"). The contract is governed by New York law. Exhibit 19.
- f. A one-year, automatically renewing, contract for cargo handling services at JFK with MSN Aviation Services, Inc. ("MSN"). The contract is governed by New York law and subject to the jurisdiction of New York courts. Exhibit 20.
- g. A three-year contract with Golden Touch Transportation of NY, Inc. ("Golden Touch") for crew transportation at JFK. The contract is governed by New York law. Exhibit 21.

50. Oceanair's United States service contracts involving its MIA route include:

- a. A one-year, automatically renewing, contract with Avianca, Inc., America Central Corp. ("Avianca Central") for station management services at MIA. On December 15, 2017, Oceanair and Avianca amended that agreement to include station management services at JFK. The contract is governed by Florida law and subject to the jurisdiction of the Florida courts. Exhibit 22.
- b. A one-year contract with Associated Energy Group, LLC ("AEG") for fuel purchase and related services at MIA. After the initial one-year term, the contract extends indefinitely until cancelled by one of the parties. The contract is governed by New York law and subject to the jurisdiction of New York state courts. Exhibit 23.
- c. An annually renewing one-year contract with Tampa Cargo, S.A.S. ("Tampa Cargo") for cargo handling services at MIA. The contract is governed by Colombian law and subject to the jurisdiction of the Colombian courts. Exhibit 24.
- d. A three-year contract for ground handling and passenger services with Ultra Aviation Services, Inc ("Ultra"). The contract is governed by Florida law and subject to the jurisdiction of Florida courts. Exhibit 25.

51. Oceanair has also paid a cash retainer to Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") in connection with this case, and maintains an interest in the unearned portion of these retainer funds, which are maintained in a U.S. bank account.

U.S. Legal Proceedings

52. Oceanair is a defendant in *Zodiac Seats US LLC v. Synergy Aerospace Corporation et al.*, No. 17-CV-00243, pending in the Eastern District of Texas where Zodiac Seats U.S., LLC (“Zodiac”) is located. The suit is for breach of contract related to alleged non-payment for seats installed on aircraft operated by Avianca and Oceanair.

53. On November 30, 2018, Wells Fargo Trust Company filed suit against Oceanair’s parent, Synergy Group, in the Southern District of New York. *See Wells Fargo Trust Co., N.A. v Synergy Group Corp.*, No. 18-cv-11151 (S.D.N.Y. Nov. 30, 2018), ECF 1 (Complaint). The Complaint alleges breach of guaranty against Synergy Group in connection with the breach of a lease agreement between Wells Fargo Trust Company and Oceanair for two aircraft engines (Serial Nos. 643846 and 573750).

54. On December 17, 2018, Swissport sent a letter to Oceanair informing it that Swissport would suspend ground services if Oceanair did not pay in full past-due amounts. Exhibit 26 is the Swissport demand letter. Oceanair has since made a payment to Swissport to stave off suspension of services.

55. On December 20, 2018, Oceanair received notifications of several mechanic’s liens filed against the aircraft it uses to operate its U.S. routes, including the following:

- a. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$150,744.39 against MSN 1208 (Registration No. PR-OBS);
- b. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$188,489.98 against MSN 1492 (Registration No. PR-OCJ);
- c. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$252,336.87 against MSN 1657 (Registration No. PR-OCX);
- d. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$57,477.22 against MSN 1608 (Registration No. PR-OCG);
- e. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$56,696.65 against MSN 1508 (Registration No. PR-OCK; and

- f. A lien filed December 12, 2018, in Dade County, Florida, by AEG for \$226,637.76 against MSN 1506 (Registration No. PR-ONV).

Exhibits 27.1 to 27.6 are the above-described mechanic's liens.

56. On December 26, 2018, Oceanair received two Enforcement Notices from Bank of Utah dated December 19, 2018, in connection with Oceanair's lease obligations under the MSN 1608 Lease and the MSN 1657 Lease. Exhibits 28 and 29 are, respectively, the MSN 1608 and MSN 1657 Enforcement Notices.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: December 26, 2018
Sao Paulo, Brazil

A handwritten signature in black ink, appearing to read 'F. P.' with a stylized flourish.

Frederico Miguel Preza Pedreira Elias Da
Costa